THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P. NO. 32802 of 1998

DATED: 30-03-2007

Between:-

Boddu Narayana Rao Dora s/o Venkatesam Dora, aged about 75 years, Pinatadivada village, Denkada Mandal, Vizianagaram District.

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PETITIONER

And

Mandal Revenue Officer, Denkada Mandal, Vizianagaram District.

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RESPONDENT

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P. NO. 32802 of 1998

O R D E R

This writ petition is filed seeking a Writ of Mandamus prohibiting the respondent from interfering with the right of the petitioner to continue in possession and enjoyment of the land of an extent of Ac.3.00 in Survey No.9 of Pinatadivada village, Denkada Mandal, Vizianagaram District and declare the action of the respondent in interfering in any way with the said right of the petitioner as illegal and arbitrary.

The case of the petitioner, in brief, is as follows:

The petitioner's family owns an extent of Ac.3.00 of land bearing Survey No.9 of Pinatadivada village, Denkada Mandal, Vizianagaram District and his family has been in continuous possession and enjoyment of the said land by paying land revenue records for more than 40 years. They have raised casuarina plantation five years ago and the casuarinas trees have to be cut and removed now. On account of personal differences between the petitioner and the respondent, the respondent made a publication on 12.11.1997 stating that the petitioner has been taking the casuarina crop from the said land without having any right and nobody shall take away the crop in the said land and if anybody takes away the casuarina crop, they will be liable for punishment. The respondent has no right to make such a publication and he cannot take the law into his hands. In fact, the respondent has not issued any notice in any form

relating to the eviction of the petitioner from the said land, though he served notices under Section 7 and 3 of the A.P. Land Encroachment Act, 1905 on some other person who are in similar occupation of the land. Without giving notice under Section 7 of the Act and holding at least summary enquiry, the petitioner cannot be evicted from the said land. For the purpose of holding auction, the respondent requested the Divisional Fore Officer (Territorial) Vizianagaram to estimate the value of the casuarina ballies and fuel wood in their land of Ac.3.00 of land who in turn addressed a letter dated 25.10.1998 to the Divisional Fore Officer (Logging Division) Poolbagh, Vizianagaram who in turn addressed a reply letter dated 26.10.1998 stating that the value of casuarina plantation in their land will be Rs. 25,723/-. Now the respondent is contemplating to auction the casuarina trees in his land to third parties. Hence the present writ petition.

The respondent filed a counter-affidavit denying the averments made in the petition. The petitioner is a most influenced person and having much landed property in and around the village Pinathadivada has forcibly occupied an extent of Ac.3.00 of Nagaraju Cheruvu Tank Poramboku unauthorisedly and paid B.Memo charges to the Government for the said unauthorized occupation. The petitioner was issued notice under Sec. 7 of the Land Encroachment Act and thereafter possession was taken on 13.11.1997 by conducting due panchanama. After adopting due procedure laid down in A.P. Land Encroachment Act, the respondent has issued Auction Notice for the sale of casuarina crop.

Heard both the learned counsel for the petitioner and the Government Pleader for respondent.

Having regard to the facts and circumstances of the case and considering the submissions made by both the learned counsel, this

Court is of the view that even if the petitioner is an encroacher he cannot be evicted straight away without following due process under law. In fact, in cases of this nature, the authorities have to issue notice as required under Section 7 of the A.P. Land Encroachment Act. Having issued notice to all those persons who are in possession of the lands in Survey No.9, it appears that though notice was issued to the petitioner, the same was not served on him. Therefore, it is just and proper to direct the respondent to issue notice as required under Section 7 of the A.P. Land Encroachment Act.

The writ petition is, accordingly, disposed of with a direction to the respondent to issue notice under Section 7 of the A.P. land Encroachment Act to the petitioner before initiating any further action under law. No costs.

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GOPALA KRISHNA

TAMADA,J
Dated: 30-03-2007
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